THE HON'BLE SRI JUSTICE VILAS V.AFZULPURKAR

WRIT PETITION No.28369 of 2015

ORDER:

Heard learned counsel for the petitioner and learned Standing Counsel for the respondents.

The petitioner, who is the sole proprietor of Petroleum Products Retail Outlet of the respondents at Nuthankal Village, Nalgonda District, seeks a declaration that the impugned proceedings dated 17.08.2015 issued by the respondents is totally arbitrary, baseless and unlawful and seeks consequential direction to release its retail outlet and permit it to operate.

The gist of the facts stated in the affidavit is as follows:

On 16.04.2015 an inspection of the petitioner's retail outlet was carried out by the Field Officers of the respondents at 4:00 P.M. by conducting tests and according to the petitioner no fault with the products was found. The petitioner submits that the Density of HSD at its outlet is also tested by the Inspection Team and found satisfactory. Strong reliance is placed upon Ex.P1 wherein it is endorsed that "HSD variation is problematic it is +3616. Checked slit measure found OK".

The petitioner submits that in spite of no fault being found, the Field Officers continued the inspection and on the alleged ground of difference in stock in HSD, they drew three samples of HSD from the petitioner's outlet and suspended the sales operations till further advice. The petitioner states that at 11:00 P.M. on the same day, the Field Officers called the petitioner and took its signatures on the letter prepared by them that there is a variation of stock of 3616 litres and that it mixed 2 Kilo Litres of Bio-

Diesel. It submits that out of the samples taken, one sample was tested by BPCL on 27.04.2015 and communicated the report dated 30.04.2015 stating that the test samples failed to meet the specifications of HSD, but the corresponding Tank Lorry Samples and Supply Location samples passed the test. The petitioner seriously contests the letter taken from it at 11:00 P.M. on the same day on the ground that it was prepared by the Field Officers to show that as if there is adulteration of the HSD. On receipt of the test reports, as above, the petitioner requested that the retention samples to be tested by an independent agency. The same was independently sent to the Indian Oil Corporation Limited. However, the said lab authorities pointed out that there are variances in the retentions of the samples that the one with the petitioner does not tally with the respondents, as they were not found sealed as per the norms. The petitioner states that it took photographs of both the retention samples and brought it to the notice of the respondents. Later, on 17.08.2015, the respondents communicated a letter stating that Indian Oil Corporation communicated the test results that retention samples with the petitioner conforms to the HSD BS III standards, whereas the retention samples with the respondents does not conform. The respondents thereafter alleged that the petitioner manipulated the retention samples with them and communicated the impugned proceedings dated 17.08.2015, wherein they informed the petitioner that further action would be initiated in this regard.

Mr. V. Pattabhi, learned counsel for the petitioner, has very vehemently contended that there is not even *prima facie* material to support the actions of the respondents in keeping the petitioner's sales under suspension and according to him the initial field inspection did not point out any defect in HSD Density as is now alleged against it. He points out the relevant portion of Ex.P1 contains readings of

Density and variation, if any, which shows
a minor deficiency variation of 1.6 as against 0.5. He further submits that the Density is now doubted as the basis of the
test reports of the retention samples analysed by Indian Oil Corporation itself is doubtful as the seals of the retention samples were found to have been tampered and the petitioner is blamed for the same for no reason. The conclusions drawn in the impugned proceedings dated 17.08.2015 are also contested by learned counsel accordingly. He therefore submits that the prolonged suspension of the business of the petitioner is not at all justified and the actions of the respondents are clearly arbitrary.

Mr. O. Manohar Reddy, learned Standing Counsel for the respondents, on instructions, submits that the samples tested having failed, there is *prima facie* material for the respondents to take further action. He submits that the impugned proceedings merely informs the petitioner that the test results and retention sample results informing it that further action in the matter would be taken and as of today, there is no termination of the petitioner's dealership and hence the Writ Petition is premature. He further submits that a reading of Ex.P1 is also incorrect as variation in the stock was found even under Ex.P1. He submits that the examination by the Field Officers at the petroleum outlet is only preliminary, particularly so far as the Density and other technical aspects are concerned and unless the products are tested in the laboratory, it cannot conclusively be said that the product meets the Density requirement. In any case, learned counsel submits that the respondents are considering the entire matter and would take appropriate decision on the course of action and also submits that intervention by this Court at this stage is not called for.

After hearing both the learned counsel, it appears to me that the issue is still under consideration of the respondents. It may be that the petitioner would get a benefit of doubt or it may be that the petitioner would be visited with appropriate further action. The retention samples admittedly did not tally so far as their seals are concerned. Hence, the test reports of the retention samples retained by the petitioner and the respondents are at variance.

It is difficult at this stage for this Court to assess the reasons as to why the retention samples are at variance and at whose instance. The contractual relationship between the petitioner and the respondents is governed by their dealership agreement and the terms and conditions thereof. The action of the respondents in suspending the sales operation of the petitioner appears within the powers of the respondents and such suspension does not call for any interference. It is however true as stated by learned counsel for the petitioner that the suspension cannot be indefinite, as it is already in force from 16.04.2015. Keeping the petroleum outlet closed for long durations is certainly prejudicial to the petitioner and also in turn prejudicial to the respondents themselves.

Hence, in my view, while interference at this stage under Article 226 of the Constitution of India is not called for, it is imperative that the respondents consider the overall fact situation of the present case and take appropriate decision in the matter expeditiously and in any case within a period of four (4) weeks from the date of receipt of a copy of this order and communicate the same to the petitioner.

With the above observations, the Writ Petition is disposed of. There shall be no order as to costs.

Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed.

VILAS V.AFZULPURKAR, J

Date:29.02.2016

Note: Issue C.C. in one week.

(B/o)

KH/PRV